

Appl No. 10/051,401
Amdt. Dated January 14, 2004
Reply to Office Action of October 14, 2003
Customer No. 27752

Remarks

Claims 1-11 are pending in the present application.

Response to the Office Action

Obviousness-Type Double Patenting

Claims 1-11 have been rejected as claiming the same invention as that claimed in U.S. Patent No. 6,544,499. In response, Applicants are submitting herewith a Terminal Disclaimer. Applicants contend that the Terminal Disclaimer moots the double patenting rejection.

The Rejection under 35 U.S.C. 102(b) over Guskey

Claims 1, 9-11 have been rejected under 35 U.S.C. §102(b) as being unpatentable over Guskey (US 5,965,113 – hereinafter, “Guskey”). Applicants respectfully traverse this rejection. Applicants’ Claim 1 requires that the anhydrous treatment composition comprise a reactive agent and a solvent in which the reactive agent is soluble and which is water-miscible. Guskey does not disclose an anhydrous treatment composition comprising a reactive agent. Further, Guskey does not even mention the use of a reactive agent in the Guskey composition. Pages 5-11 of Applicants’ specification explains that a reactive agent comprises a reactive group or “hook” and a mono or multivalent cosmetically active functional group that imparts one or more visual, tactile, or other cosmetic beneficial effects on proteinaceous materials such as keratin, hair, skin, animal fur, or wool. The reactive agent comprises one or more reactive groups selected from the group consisting of electrophilic, nucleophilic, protected thiol groups and mixtures thereof.

Since Guskey does not disclose an anhydrous treatment composition comprising a reactive agent, Applicants contend that the Guskey reference does not anticipate Applicants’ claims 1, 9-11. Therefore, Applicants contend that the present invention is novel in view of Guskey and that the rejection should be withdrawn.

The Rejection under 35 U.S.C. 103(a) over Guskey

Claims 1-2 have been rejected under 35 U.S.C. §103(a) as being unpatentable over Guskey (US 5,965,113 – hereinafter, “Guskey”). Applicants respectfully traverse this rejection. Guskey does not teach or suggest all of Applicants’ claim limitations and therefore, does not establish a *prima facie* case of obviousness (see MPEP 2143.03). Guskey does not teach an anhydrous treatment composition comprising (a) a reactive agent, (b) a solvent in which the reactive agent is soluble and which is water-miscible. Further, Guskey does not even mention the use of a reactive agent in the composition.

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The present invention teaches anhydrous treatment compositions useful in treating amino-acid based substrates with reactive cosmetic actives. Guskey teaches anhydrous antiperspirant gel-solid stick compositions. While both inventions relate to anhydrous compositions, the present invention is directed to anhydrous compositions comprising reactive agents. Reactive agents as described in Applicant's specification are not disclosed in Guskey. MPEP 2143.03 states that to establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. As Guskey does not teach or even suggest the use of a reactive agent, a *prima facie* case of obviousness has not been established.

A *prima facie* case of obviousness has not been established. Therefore, Applicants contend that the claimed invention is not obvious in view of Guskey and that the rejection should be withdrawn.

Conclusion

Applicants have made an earnest effort to distinguish the invention from the applied reference. WHEREFORE, Applicants respectfully request reconsideration of this application and allowance of Claims 1-11.

Respectfully submitted,
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